

SENATE BILL REPORT

ESHB 2938

As Reported by Senate Committee On:
State Government, Tribal Relations & Elections, February 21, 2018
Ways & Means, February 26, 2018

Title: An act relating to campaign finance law enforcement and reporting.

Brief Description: Concerning campaign finance law.

Sponsors: House Committee on State Govt, Elections & IT (originally sponsored by Representatives Hudgins, Dolan, Kagi, Wylie, Ormsby and Pollet).

Brief History: Passed House: 2/14/18, 94-4.

Committee Activity: State Government, Tribal Relations & Elections: 2/19/18, 2/21/18 [DP-WM, w/oRec].

Ways & Means: 2/24/18, 2/26/18 [DPA(WM)].

Brief Summary of Amended Bill

- Changes procedures for filing a citizen's action complaint with the Public Disclosure Commission (PDC).
- Allows the PDC, or on the PDC's delegation, the executive director, to dismiss certain campaign finance or disclosure complaints as remediable violations.
- Removes independent authority of the attorney general (AG) to initiate campaign finance and disclosure investigations and enforcement actions.
- Allows the PDC to issue a \$10,000 penalty for each violation of campaign finance or disclosure law.
- Requires political committees to file a 60-day notice of dissolution and meet certain conditions before dissolving.
- Creates an account for the administration of state campaign finance and disclosure law, and requires all penalties from enforcement actions to be deposited in the account.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Saldaña.

Minority Report: That it be referred without recommendation.
Signed by Senators Miloscia, Ranking Member; Zeiger.

Staff: Samuel Brown (786-7470)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Ways & Means.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Honeyford, Assistant Ranking Member; Bailey, Becker, Billig, Brown, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Rivers, Schoesler, Van De Wege, Wagoner and Warnick.

Staff: Julie Murray (786-7711)

Background: The PDC. The PDC was created by the passage of Initiative 276 in 1972. The PDC is empowered to provide timely public access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with contribution limits and other campaign finance restrictions.

Reporting Requirements. All political committees and candidates that receive contributions and make expenditures must file a statement of organization with the PDC and periodically report to the PDC on their contribution and expenditure activities. An initial report is due the same day the statement of organization is filed. Subsequent reports are due 21 days and seven days before the election, one month after the election, and each month the committee receives or spends at least \$200. Political committees and candidates also must submit a special report each time it receives a contribution of \$1,000 or more during the special reporting period seven days before a primary and 21 days before a general election. Political committees and candidates must include in their reports any debt or liability over \$250 dollars, as well as any debt over \$50 that is outstanding for over 30 days.

Independent expenditures, which are any expenditure over \$100, in the aggregate, made to a political campaign, are also separately reportable to the PDC.

PDC Enforcement Authority. The PDC may initiate its own investigations of violations of campaign finance and disclosure statutes or investigate complaints filed by any person. Investigations can result in an adjudicative proceeding to determine a violation and issue appropriate penalties. The PDC may assess a penalty up to \$10,000 or turn over an investigation to the AG, who may seek higher penalties in court.

The PDC may delegate authority to its Executive Director (Director), including investigatory powers, but only the Commission itself is authorized to determine a violation or assess penalties. The PDC has adopted rules authorizing the Director to resolve minor and technical violations without a formal investigation or determination of a violation. The Director may

resolve a minor or technical violation without any formal investigation by issuing a warning or conditioning the resolution on future compliance. Formal investigations can result in the Director bringing an issue to the PDC for an adjudicative proceeding to determine whether a violation occurred.

AG and Prosecutor Enforcement Authority. The AG and prosecutors have separate and independent authority to initiate investigations and enforcement actions for violations of campaign finance and disclosure law. The AG and prosecutors can compel the production of evidence by any person in relation to an investigation and prosecute alleged violations in court and may refer the matter to the PDC for an initial investigation or prosecution of its own.

Citizen's Action. Any person may initiate a legal action in court on behalf of the state to enforce an alleged violation of campaign finance and disclosure if the AG and prosecutor do not file an action in response to two separate notices of the alleged violation: (1) an initial 45 day notice of an alleged violation, and (2) a subsequent ten-day notice of the person's intent to file a citizen's action.

Penalties. Penalties awarded in a citizen's action are transferred to the state, but the state will reimburse a successful plaintiff for legal costs and attorney fees incurred. The court may require the state to pay the costs and attorney's fees if the defendant prevails and may require a person who files a citizen's action to pay the defendant's costs and attorney's fees if the case was brought without reasonable cause. The court may award the state its own costs and attorney's fees, including investigation costs. The court may triple the award to the state, including costs, as punitive damages for intentional violations.

Summary of Amended Bill: PDC Enforcement Procedures. If a complaint is filed with or initiated by the PDC, it must:

- dismiss the complaint or resolve the matter as a remedial violation or technical correction;
- initiate an investigation, conduct hearings, and issue and enforce an order; or
- refer the matter to the AG.

If the PDC initiates an investigation, an initial hearing must be held within 90 days of the complaint being filed. The PDC may delegate authority to the Director to resolve remedial violations and matters in need of technical corrections. If a violation is found, the PDC may order that the person cease and desist the activity in addition to its current penalty authority.

Remedial Violations. Remedial violations are defined as campaign finance disclosure violations which:

- involve no more than the contribution limit for the office, or no more than \$1,000 if there is no contribution limit;
- the PDC has entered into an agreement to resolve the matter;
- do not materially affect the public interest; and
- saw the person take corrective action and substantially meet all other filing deadlines, or involved a candidate who lost the election and did not receive contributions over 100 times the individual contributor limit per election.

AG and Prosecutor Enforcement Procedures. The independent authority of the AG to initiate investigations and enforcement actions for violations of campaign finance and disclosure law is removed. The authority of prosecutors to investigate or enforce campaign finance and disclosure law is removed. The AG must publish notice on its website explaining whether or not it commenced legal action within 45 days of receiving a referral from the PDC of an alleged campaign finance or disclosure violation.

Citizen's Action Procedures. A person may bring a citizen's action complaint if:

- the PDC has failed to take action within 90 days of receiving the complaint; or
- if the complaint was referred to the AG, the AG fails to take action within 45 days of receiving the referral; and
- after lapse of the relevant period, the AG fails to commence an action after receiving a subsequent ten-day notice.

Penalties. The PDC may assess a penalty of up to \$10,000 per violation of campaign finance or disclosure law, though the parties may agree by stipulation to another amount. The PDC may waive penalties for a first-time violation, but a second violation of the same requirement by the same person must result in a penalty.

When assessing a civil penalty for a violation of campaign finance and disclosure, lobbyist reporting, or personal financial affairs statement, courts may consider the nature of the violation and any relevant circumstances, including:

- the person's compliance history and experience;
- the impact of the violation on the public;
- experience with campaign finance law;
- the amount of financial activity by the person during the campaign;
- the proportion of the violation, and whether the person benefited economically or politically from it;
- whether emergencies existed;
- technical or staff errors;
- good faith uncertainty or efforts at compliance; and
- penalties in similar cases.

If damages are awarded in an action against a lobbyist, the judgment may be awarded against the lobbyist and the lobbyist's employer or employers in joint and several liability. The public disclosure transparency account is created for deposits of penalty awards, settlements, costs, and fees which are transferred to the state for implementation and administration of campaign finance and disclosure law.

Contribution Reporting and Disclosure. Candidates, political committee members, and paid staff may deposit contributions into the campaign's accounts. Online or credit card contributions are considered received at the time money is transferred into the political committee account. Online or credit card contributions which are made outside the legislative session contribution freeze, but not received in the candidate's account until the contribution freeze, are considered received outside of the contribution freeze. Political committees need only file reports with the PDC if the committee is participating in that particular election.

Filers may submit an amended report within 21 days of the initial report if the amended report is filed more than 30 days before an election, the adjustment to the initial report is within three times the contribution limit or \$200, and the initial report was filed in good faith with all information available or a refund was issued.

The threshold amount of debt a candidate or political committee is required to report is raised to \$750, and the required reporting of outstanding debt over \$50 is eliminated. Any bill, good, or service unpaid within 10 days, or within 5 days if within 30 days of an election, is reportable as debt. Reoccurring expenditures paid on time are not reportable as debt. The cumulative value of advertising must be half the contribution limit in a race to qualify as an independent expenditure.

Books of Account. Committee books of account must be kept current within one business day during the ten calendar days before the election. Political committee books of account must be open for public inspection between 9 a.m. and 5 p.m. the ten calendar days before the election at a place agreed upon by the treasurer and the requestor. Political committee treasurers may provide digital access to books of account rather than scheduling an appointment for a physical inspection.

Electronic Filing and Communications. All persons filing campaign or lobbying reports must provide an email address and update the PDC if their address changes. If the PDC's electronic filing system is inoperable for any period of time, it must log the instance and provide notice to all reporting entities when the system is again operational. Reports due to the PDC on a date the electronic filing system is inoperable are not late if filed the first day the system is again operational.

Dissolution of Political Committees. Political committees and continuing political committees may dissolve 60 days after filing a final report once the committee is concluded and has no outstanding debts and notice of intent to dissolve is filed with the PDC if, during that time:

- the committee does not engage in any political activity;
- no complaints or lawsuits are pending against the committee;
- all penalties or court assessments are paid; and
- the committee continues to report regularly with the PDC.

Special Reporting Periods. During the special reporting period, treasurers must file a special report any time the committee or candidate receives or makes contributions, in the aggregate, from a single source, of three times the contribution limit.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Clarifies definition of remedial violation.
- Allows courts to apply factors used to determine scope of penalty to all campaign finance violations.
- Removes the requirement that a PDC staff finding that a matter resolved as a technical correction or remedial violation must be approved by the full commission.

- Requires that the AG provide a statement on the AG Office's web site within 45 days of receiving a referral from the PDC, regarding whether the office will commence an action and clarifies that the statement constitutes official state action.
- Removes requirement that the AG Office's statement regarding whether it will commence an action in response to a referral be reasonably supported.
- Requires that all settlements of campaign finance enforcement actions be deposited in the public disclosure transparency account.
- Indexes the definition of independent expenditure to half the contribution limit from an individual in the race.
- Clarifies that the public disclosure transparency account is appropriated, and requires fees and costs, if awarded, to be deposited in the account.
- Removes requirement that administrative remedies be exhausted before the PDC refers a complaint to the AG.
- Allows committees to make expenditures related to the dissolution process after notice of dissolution is filed.
- Clarifies that dissolution does not exempt committees from responsibility for actions taken prior to dissolution, but filed after dissolution, if within the statute of limitations.

Appropriation: \$250,000 from General Fund-State to the Public Disclosure Commission.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (State Government, Tribal Relations & Elections): PRO: This will provide the PDC with the authority to identify reporting errors and give filers time to correct them before something becomes an official complaint. Voters didn't intend to create a system that allows anyone to make an end-run around the PDC. Prioritization of cases should be based on public impact. The bill also updates several statutes with out-of-date definitions or terminology, including digital communication and books of account. This streamlines the process to protect filers who make minor mistakes while still holding people accountable for their duty to report completely.

CON: As written, the bill has unintended consequences and will make us more vulnerable to the influence of dark money. Enforcement of campaign finance laws will be outsourced to citizens who may not have the public interest in mind. We support giving the PDC jurisdiction of small, technical concerns, while the AG handles more complex cases. Concerns are lessened if the PDC has more FTEs to complete its investigations.

OTHER: The timelines for citizen's action complaints in this bill delay justice. We would ask that you consider having the AG engaged in these from the beginning if there's something serious enough that warrants their attention. We have concerns about whether a citizen's action complaint could be brought if the PDC retains jurisdiction over a non-remedial action—when does their jurisdiction close?

Persons Testifying (State Government, Tribal Relations & Elections): PRO: Anne Levinson, Chair, Public Disclosure Commission; Jan Himebaugh, Building Industry Association of Washington.

CON: Mike Webb, Attorney General's Office.

OTHER: Rowland Thompson, Allied Daily Newspapers of Washington; Maxford Nelsen, Freedom Foundation.

Persons Signed In To Testify But Not Testifying (State Government, Tribal Relations & Elections): No one.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Ways & Means): None.

Persons Testifying (Ways & Means): No one.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.